

ASSEMBLY BILL

No. 409

Introduced by Assembly Member Garrick

February 23, 2009

An act to amend Section 1063.5 of the Insurance Code, relating to the California Insurance Guarantee Association.

LEGISLATIVE COUNSEL'S DIGEST

AB 409, as introduced, Garrick. California Insurance Guarantee Association: insurer insolvency.

Existing law requires the California Insurance Guarantee Association to collect premium payments from member insurers sufficient to cover the obligations of an insurer that has become insolvent. Under existing law, the association must use those premium payments to pay for the claims and costs of an insolvent insurer, as specified.

This bill would state that the payments and costs of an insolvent insurer which have been incurred but not reported are included within the claim payments and costs to be paid for by the association, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1063.5 of the Insurance Code is amended
- 2 to read:
- 3 1063.5. Each time an insurer becomes insolvent then, to the
- 4 extent necessary to secure funds for the association for payment
- 5 of covered claims of that insolvent insurer and also for payment

1 of reasonable costs of adjusting the claims, the association shall
2 collect premium payments from its member insurers sufficient to
3 discharge its obligations. The association shall allocate its claim
4 payments and costs, incurred or estimated to be incurred, *including*
5 *incurred but not reported payments and costs*, to one or more of
6 the following categories: (a) workers' compensation claims; (b)
7 homeowners' claims, and automobile claims, which shall include:
8 automobile material damage, automobile liability (both personal
9 injury and death and property damage), medical payments and
10 uninsured motorist claims; and (c) claims other than workers'
11 compensation, homeowners', and automobile, as above defined.
12 Separate premium payments shall be required for each category.
13 The premium payments for each category shall be used to pay the
14 claims and costs allocated to that category. The rate of premium
15 charged shall be a uniform percentage of net direct written premium
16 in the preceding calendar year applicable to that category. The rate
17 of premium charges to each member in the appropriate categories
18 shall initially be based on the written premium of each insurer as
19 shown in the latest year's annual financial statement on file with
20 the commissioner. The initial premium shall be adjusted by
21 applying the same rate of premium charge as initially used to each
22 insurer's written premium as shown on the annual statement for
23 the second year following the year in which the initial premium
24 charge is made. The difference between the initial premium charge
25 and the adjusted premium charge shall be charged or credited to
26 each member insurer by the association as soon as practical after
27 the filing of the annual statements of the member insurers with the
28 commissioner for the year on which the adjusted premium is based.
29 Any credit due in a specific category to a member insurer as a
30 result of the adjusted premium calculation may be refunded to the
31 member insurer at the discretion of the association if the member
32 insurer has agreed with the commissioner to no longer write
33 insurance in that category but has not withdrawn from the state
34 and surrendered its certificate of authority. However, in the case
35 of an insurer that was a member insurer when the initial premium
36 charge was made and that paid the initial assessment but is no
37 longer a member insurer at the time of the adjusted premium charge
38 by reason of its insolvency or its withdrawal from the state and
39 surrender of its certificate of authority to transact insurance in this
40 state, any credit accruing to that insurer shall be refunded to it by

1 the association. "Net direct written premiums" shall mean the
2 amount of gross premiums, less return premiums, received in that
3 calendar year upon business done in this state, other than premiums
4 received for reinsurance. In cases of a dispute as to the amount of
5 the net direct written premium between the association and one of
6 its members the written decision of the commissioner shall be
7 final. The premium charged to any member insurer for any of the
8 three categories or a category established by the association shall
9 not be more than 2 percent of the net direct premium written in
10 that category in this state by that member per year, starting on
11 January 1, 2003, until December 31, 2007, and thereafter shall be
12 1 percent per year. The association may exempt or defer, in whole
13 or in part, the premium charge of any member insurer, if the
14 premium charge would cause the member insurer's financial
15 statement to reflect an amount of capital or surplus less than the
16 minimum amounts required for a certificate of authority by any
17 jurisdiction in which the member insurer is authorized to transact
18 insurance. However, during the period of deferment, no dividends
19 shall be paid to shareholders or policyholders by the company
20 whose premium charge was deferred. Deferred premium charges
21 shall be paid when the payment will not reduce capital or surplus
22 below required minimums. These payments shall be credited
23 against future premium charges to those companies receiving larger
24 premium charges by virtue of the deferment. After all covered
25 claims of the insolvent insurer and expenses of administration have
26 been paid, any unused premiums and any reimbursements or claims
27 dividends from the liquidator remaining in any category shall be
28 retained by the association and applied to reduce future premium
29 charges in the appropriate category. However, an insurer which
30 ceases to be a member of the association, other than an insurer that
31 has become insolvent or has withdrawn from the state and has
32 surrendered its certificate of authority following an initial
33 assessment that is entitled to a refund based upon an adjusted
34 assessment as provided above in this section, shall have no right
35 to a refund of any premium previously remitted to the association.
36 The commissioner may suspend or revoke the certificate of
37 authority to transact business in this state of a member insurer
38 which fails to pay a premium when due and after demand has been
39 made.

1 Interest at a rate equal to the current federal reserve discount
2 rate plus 2 ½ percent per annum shall be added to the premium of
3 any member insurer which fails to submit the premium requested
4 by the association within 30 days after the mailing request.
5 However, in no event shall the interest rate exceed the legal
6 maximum.

O